

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3427 OF 2017

Vimalkumar

.. Appellant/Claimant

Vs.

1.Karthikeyan

2.C.Gokilaveni

3.United India Insurance Company Ltd.,
Rep.by its General Manager,
No.4-A,Big Bazaar Street,
Dharapuram, Erode District-638 656

4.P.Ramachandran

5.United India Insurance Company Ltd.,
No.2/117,PRS Road, Chennimalai & Post,
Perundurai Taluk, Erode District-638 051
(Respondents 1, 4 and 5 were given up)

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2015 made in M.C.O.P.No.1578 of 2013 on the file of the Motor Accident Claims Tribunal,(I Additional District Court),Tirupur.

For Appellant : Mr.P.Parthi Kannan

For R3 : Mr.C.Paranthaman

For 1, 4, 5 : Given Up

R2 : Not Ready

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 30.11.2015 made in M.C.O.P.No.1578 of 2013 on

the file of the Motor Accident Claims Tribunal, (I Additional District Court), Tirupur.

2.The appellant is claimant in M.C.O.P.No. 1578 of 2013 on the file of the Motor Accident Claims Tribunal,(I Additional District Court),Tirupur. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.05.2013.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Car bearing Registration No.TN-33-AZ-9480 belonging to the 2nd respondent and directed the 3rd respondent being insurer of the said car to pay a sum of Rs.4,41,000/- as compensation to the appellant and dismissed the claim petition against the respondents 4 and 5.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant has sustained grievous injuries, all over the body. The appellant examined P.W.2 Doctor and proved the injuries. P.W.2 Doctor assessed the disability of the appellant as 39.33%. Due to the injuries, the appellant could not continue his work as he was doing earlier. The Tribunal, without considering the same, has awarded compensation towards disability by applying percentage method. The Tribunal ought to have adopted multiplier method for awarding compensation towards future loss of earning. The appellant was earning a sum of Rs.20,000/- per month by working as a Lab In-charge in Rohini Textile Industry (P) Ltd.,. He marked the authorisation letter, salary certificates, Form-16 and statement of Accounts as Exs.P15 to P19. The Tribunal without considering the same, fixed only a meagre sum of Rs.7,000/- as monthly income of the appellant. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and lost earning capacity and therefore, the Tribunal has rightly adopted

percentage method for awarding compensation towards disability. Considering the evidence of PW2 Doctor and Ex.P.13 disability certificate, the Tribunal has fixed the percentage of disability as 40%. The Tribunal, after considering both oral and documentary evidence in proper perspective, awarded compensation which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as 3rd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that in the accident, he sustained fractures and multiple injuries all over the body. According to appellant, he was admitted in ARS Hospital, Tirupur and for further treatment, he was taken to Ganga Medical Centre & Hospital, Coimbatore on 27.05.2013 and had taken treatment for 40 days as in-patient from 27.05.2013 to 13.06.2013. A surgery was conducted on his stomach. To prove the said contention, he examined himself as P.W.1 and Doctor as P.W.2. P.W.2 Doctor, examined the appellant and assessed the disability of the appellant as 39.33%. The Tribunal has fixed the disability as 40%. The appellant failed to prove that he lost his earning capacity and suffered functional disability. Hence, the appellant is not entitled to compensation by adopting multiplier method. The appellant contended that at the time of accident, he was working as a Lab incharge in Rohini Textile Industry (P) Ltd., and was earning a sum of Rs.20,000/- per month. The appellant failed to produce any document to prove the same. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.7,000/- as monthly income of the appellant. The accident is of the year 2013. The monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- per month is fixed as the notional income of the appellant. Due to injuries, the appellant would not have attended his work atleast for six months. Thus, the compensation awarded by the Tribunal towards loss of earning is enhanced to Rs.60,000/- (Rs.10,000/- x 6). The Tribunal has not awarded any amount towards loss of amenities and damage to clothes. Considering the nature of injuries sustained by the appellant, a sum of Rs.15,000/- is awarded towards loss of amenities and Rs.1,000/- towards damage to clothes. The amounts awarded by the Tribunal for attendant charges and extra nourishment are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the same are enhanced to Rs.15,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they are confirmed. Thus the compensation awarded by the

Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,20,000/-	1,20,000/-	Confirmed
2.	Loss of earning	21,000/-	60,000/-	Enhanced
3.	Pain and suffering	50,000/-	50,000/-	Confirmed
4.	Medical Expenses	2,20,000/-	2,20,000/-	Confirmed
5	Attendant charges	10,000/-	15,000/-	Enhanced
6	Transportation	10,000/-	10,000/-	Confirmed
7	Extra nourishment	10,000/-	15,000/-	Enhanced
8	Loss of amenities	-	15,000/-	Granted
9	Damages to cloth	-	1,000/-	Granted
	Total	Rs.4,41,000/-	Rs.5,06,000/-	Enhanced by Rs.65,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,41,000/- is hereby enhanced to Rs.5,06,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. This appeal is dismissed against the respondents 4 and 5. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsn

To

1. The Motor Accidents Claims Tribunal,
I Additional District Judge, Tirupur.

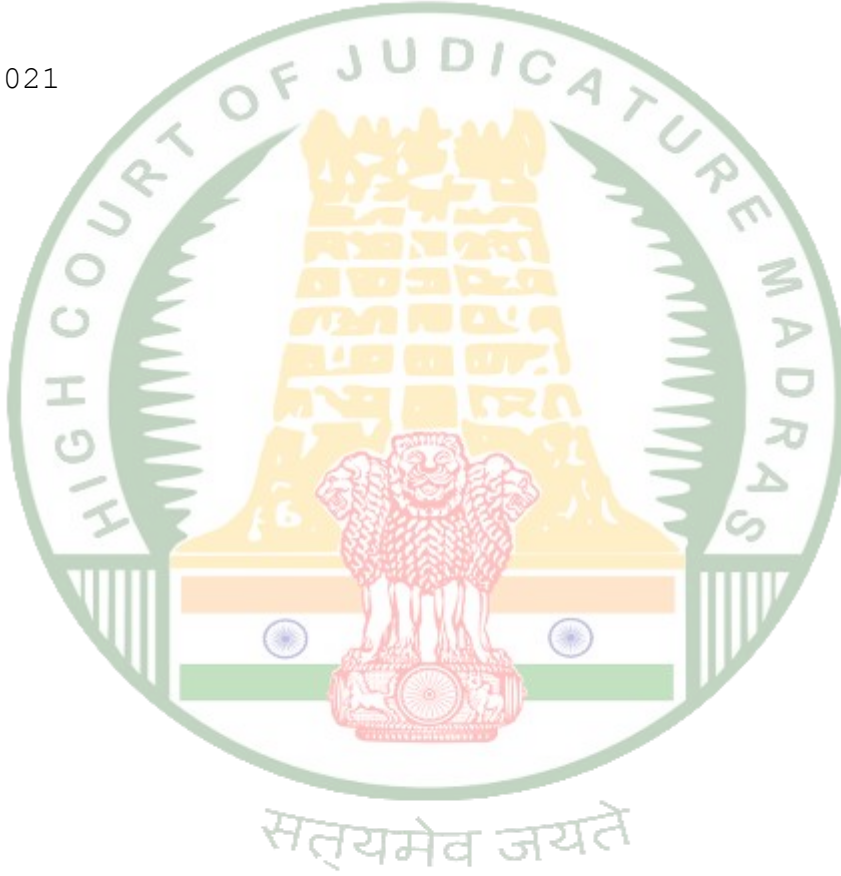
2. The Section Officer,
V.R.Section, High Court, Madras.

+2cc to Mr.C.Paranthaman, Advocate, S.R.No.10655

+2cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.11176

C.M.A.No.3427 of 2017

PVS (CO)
CS/29/01/2021



WEB COPY